

DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

July 24, 1998

United States of America,	)	
Complainant,	)	
	)	
	)	8 U.S.C. §1324c Proceeding
v.	)	OCAHO Case No. 98C00061
	)	
Hermino Bueno Cortes,	)	
Respondent.	)	
_____	)	

ORDER GRANTING COMPLAINANT'S MOTION FOR DEFAULT JUDGMENT

Appearances: Frederick E. Newman, Esquire  
Immigration and Naturalization for complainant

Hermino Bueno Cortes, pro se

Before: Administrative Law Judge Joseph E. McGuire

On March 23, 1998, complainant, acting by and through the Immigration and Naturalization Service (INS), filed the single-count Complaint at issue, alleging that Hermino Bueno Cortes (respondent/Cortes) violated the pertinent provisions of the Immigration Reform and Control Act of 1986 (IRCA), as amended, by having used and/or possessed forged, counterfeited, altered, and falsely made documents namely, a social security card and an INS Form I-551.

In that Complaint, complainant moved that Cortes be ordered to cease and desist from violating the provisions of 8 U.S.C. § 1324c(a)(2) and that he also be ordered to pay a \$500 civil money penalty for his alleged knowing use of forged documents.

On March 25, 1998, the Chief Administrative Hearing Officer issued a Notice of Hearing, in which Cortes was advised that in the event that he failed to file an Answer to the Complaint within 30 days of his receipt of the Complaint, a judgment by default could be entered against him.

On that date, also, that Notice of Hearing, as well as a copy of the Complaint herein, was mailed to respondent at 2337 Martin Luther King, Fresno, California 93706, Certified Mail, Return Receipt Requested.

On April 16, 1998, the United States Postal Service returned the requested signed receipt, confirming that delivery of the Notice of Hearing and the Complaint copy had been delivered to Cortes at that address on or prior to that date.

In accordance with the provisions of 28 C.F.R. § 68.9(a), Cortes was required to have filed an answer within 30 days of his acknowledged receipt of the Complaint, or by May 18, 1998. To date, Cortes has failed to do so.

On June 18, 1998, the undersigned issued an Order to Show Cause, in which Cortes was ordered to show cause why a judgment by default should not be entered against him. The provisions of 28 C.F.R. § 68.3(a)(3) provide that written orders, as here, shall be effectively served upon a party by mailing such orders to the last known address of a party. Accordingly, that Order to Show Cause was sent first class mail to Cortes at 2337 Martin Luther King, Fresno, California 93706, his last known address.

On June 24, 1998, complainant filed a Motion for Default Judgment, asserting that respondent was advised on two (2) different occasions that his answer must be filed within 30 days after receipt of the Complaint. That Motion also asserted that Cortes had failed to file a written answer within the time frame prescribed by 28 C.F.R. § 68.9(b), which provides in pertinent part:

Failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of his/her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default.

As of this date, the June 18, 1998 first class letter containing the Order to Show Cause has not been returned to this Office by the United States Postal Service, marked or stamped as having been undeliverable. Moreover, and in accordance with the provisions of 28 C.F.R. § 68.3(a)(3), as noted earlier, service of the Order to Show Cause had effectively been served upon Cortes since that written order had been mailed to his last known address.

Because respondent has failed to file the required Answer in a timely fashion after service of the March 23, 1998 Complaint, and also has not shown good cause for having failed to comply with the provisions of the June 18, 1998 Order to Show Cause, complainant's Motion for Default Judgment is hereby granted pursuant to 28 C.F.R. § 68.9(a).

Accordingly, Cortes is found to have violated the provisions of 8 U.S.C. § 1324c(a)(2), in the manner alleged in Count I of the Complaint, by having knowingly used and possessed

two (2) forged, counterfeited, altered, and falsely made documents, namely a social security card and a Form I-551, both in the name of Bueno Hermino, and did so after November 29, 1990.

Accordingly, Cortes is ordered to pay civil money penalties totaling \$500 for the two (2) violations alleged in Count I.

Cortes is further ordered to cease and desist from further violations of 8 U.S.C. § 1324c(a)(2).

Joseph E. McGuire  
Administrative Law Judge

#### Appeal Information

This Order shall become the final order of the Attorney General unless, within 30 days from the date of this Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to respondent, in accordance with the provisions of 8 U.S.C. §§ 1324c(d)(4), 1324c(d)(5), and 28 C.F.R. § 68.53.

## CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July, 1998, I have served copies of the foregoing Order Granting Complainant's Motion for Default Judgment to the following persons at the addresses shown, in the manner indicated:

Office of Chief Administrative Hearing Officer  
Skyline Tower Building  
5107 Leesburg Pike, Suite 2519  
Falls Church, Virginia 22041  
(original hand delivered)

Dea Carpenter, Esquire  
Associate General Counsel  
Immigration and Naturalization Service  
425 "I" Street, N.W., Room 6100  
Washington, D.C. 20536  
(one copy sent via regular mail)

Frederick E. Newman, Esquire  
Livermore Sector Headquarters  
Immigration and Naturalization Service  
6102 Ninth Street  
Dublin, California 94508  
(one copy sent via regular mail)

Hermينو Bueno Cortes  
2337 Martin Luther King  
Fresno California 93706  
(one copy sent via regular mail)

Jeffrey C. Westcott  
Legal Technician to  
Joseph E. McGuire  
Administrative Law Judge  
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Office of the Chief Administrative  
Hearing Officer  
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